IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

WP(C).No. 13593 of 2006(R)

AGAINST IA.NO.877/06 IN IA.4194/04 IN OS.706/2002 of ADDL.M.C.,KOZHIKODE-I

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PETITIONER:

M.K.KRISHNANKUTTY,
CHENOTHKANDY PARAMBA,
KACHERI AMSOM DESOM, KOZHIKODE.

BY ADV. SRI.K.B.GANGESH
SRI.ANIL GEORGE

RESPONDENTS:

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1. **K.KUSALAKUMARI, KARICHAKATTU VEEDU, ANANGOTTU PARAMBA, KOTTOOLI.**

2. **M.R.MOHANDAS, CHAITHRAM, POOJAPPURA, THIRUVANANTHAPURAM.**

3. **M.R.VASANTHA, PARAMBATH THAZHAM, EDAKKAD.**

4. **K.BINDU, KULATHUMKARA THARA, MARUVANKUDIKKADA, VADAVOOR, THANJAVOOR, TAMIL NADU.**

5. **MANIKANDAN, CHURAKUZHIMEL VEEDU, KAYAKKODI, KUTTIADI, VADAKARA TALUK.**

6. **SARALA, KOGEN HILL, GOODALLORE, NILGIRI.**

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.13593/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE COMMISSIONER'S REPORT DT. 17.1.06 WITH PLAN.

EXT.P2:- COPY OF THE AFFIDAVIT DT.16.2.06 FILED BY THE PETITIONER IN IA. NO.877/06 TO REMIT THE COMMISSIONER'S REPORT.

EXT.P3:- COPY OF THE ORDER DT. 23.2.06 OF 1ST ADDITIONAL MUNSIFF'S COURT, KOZHIKODE IN IA. NO.877/06 IN IS/4194/04 IN OS. NO.706/02.

/TRUE COPY/

P.S. TO JUDGE

tss

M.N. KRISHNAN, J.

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W.P.C. NO. 13593 OF 2006

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Dated this the 16th day of July, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside Ext.P3 order. A preliminary decree for partition was passed and a final decree is pending. The extent of the property involved is 1.75 cents and it is not divisible by metes and bounds. So necessarily an auction has to be conducted among the sharers and therefore the Court has directed the Commissioner to fix the upset price and conduct the auction among the sharers. I am afraid that the learned Munsiff has committed an error and it is strictly against the provisions of Section 234(2) of Civil Rules of Practice. Under Section 234 (2) the sale when the bid is not open to strangers shall be held in open Court on a day to which the case is adjourned for the propose. The highest bid shall be accepted and the sale confirmed at once unless the sale is adjourned to some other date. This is also made clear by a decision of this Court reported in **Anthony Ammal v. Antony (1983 KLT 645).**

Therefore, the order under challenge directing the Commissioner to conduct the auction is set aside. The Court may fix a reasonable upset price and direct the parties to appear before the Court on a particular date and conduct auction among sharers.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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